
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SARA PARADA, individually and as
parent/guardian acting for and on behalf of
D.P., a minor;

Plaintiffs,

v.

DAVID PENNINGTON, M.D. et al.,
Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFFS'
MOTION TO DISMISS DEFENDANTS
SEAN HENDERSON, BRADLEY
BURTON, AND GRANGER MEDICAL
CLINIC, P.C. AND DENYING
DEFENDANT IHC HEALTH
SERVICES, INC.'S RENEWED MOTION
FOR LEAVE TO FILE AMENDED
PLEADING AND CROSS-CLAIM AS
MOOT

Case No. 2:21-cv-00534-TS-JCB

Judge Ted Stewart

Magistrate Judge Jared C. Bennett

This matter comes before the Court on Plaintiffs' Motion Under Rule 41 for Voluntary Dismissal of Defendants Sean Henderson, Bradley Burton, and Granger Medical Clinic, P.C.¹ and Defendants IHC Health Services, Inc. dba Utah Valley Hospital and IHC Health Services, Inc. dba Intermountain Medical Group's (collectively "IHC") Renewed Motion for Leave to File Amended Pleading and Cross-Claim.² For the reasons discussed herein, the Court will grant Plaintiffs' Motion and deny Defendants' Motion as moot.

¹ Docket No. 148.

² Docket No. 149.

Plaintiffs sue Defendants alleging medical negligence arising from the prenatal care of Sara Parada and the subsequent care of her child, D.P. Defendants Sean J. Henderson, D.O., Bradley C. Burton, PA-C, and Granger Medical Clinic, P.C. (“Granger Defendants”) and David Pennington, M.D., and Pennington Medical Center PLLC (“Pennington Defendants”) previously filed motions for summary judgment³ after which IHC immediately filed a Motion for Leave to File an Amended Pleading and Cross-Claim to allocate fault to both groups of Defendants.⁴ Plaintiffs filed notices of non-opposition to the motions for summary judgment and then subsequently retained new counsel. Pennington Defendants withdrew their motion for summary judgment. With their new counsel, Plaintiffs filed an opposition to the Granger Defendants Motion for Summary Judgment.

The Court denied Granger Defendants’ Motion for Summary Judgment finding it was premature.⁵ The Court also denied IHC Defendants’ Motion for Leave to Amend finding that it was premised on the summary judgment motions that were withdrawn and denied. The Court stated in the Order that if summary judgment was entered against Granger or Pennington Defendants at a later time, IHC could renew its motion.⁶

Plaintiffs now move for voluntary dismissal of Granger Defendants with prejudice under Fed. R. Civ. P. 41. The Motion is unopposed. IHC Defendants renewed its Motion for Leave to File Amended Pleading and Cross-Claim “to preserve its Fourth Affirmative Defense.”⁷

³ Docket Nos. 62, 63.

⁴ Docket No. 66.

⁵ Docket No. 143, at 2.

⁶ *Id.* at 2–3.

⁷ Docket No. 157, at 2.

Fed. R. Civ. P. 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Based on Plaintiffs’ Motion and good cause appearing, the Court will grant the Motion and dismiss all claims against Granger Defendants without prejudice. As such, IHC Defendants’ Motion for Leave to Amend the pleadings to assert cross claims against Granger Defendants is denied as moot as they are no longer parties. This ruling does not preclude IHC Defendants from otherwise seeking to allocate fault against the dismissed parties as permitted under the Federal Rules of Civil Procedure.

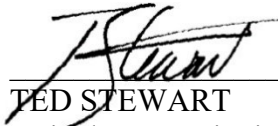
It is therefore

ORDERED that Plaintiffs’ Motion Under Rule 41 for Voluntary Dismissal (Docket No. 148) is GRANTED, the dismissal is without prejudice; it is further

ORDERED that Defendants’ Renewed Motion for Leave to File Amended Pleading and Cross-Claim (Docket No. 149) is DENIED AS MOOT.

DATED November 6, 2023.

BY THE COURT:



TED STEWART
United States District Judge